

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

RESTAURANT LAW CENTER, *et al.*,

Plaintiffs

v.

UNITED STATES DEPARTMENT OF LABOR, *et al.*,

Defendants.

Civil Action No. 1:21-cv-01106-RP

**PLAINTIFFS' MOTION FOR LEAVE TO FILE A
NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF THEIR
EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Restaurant Law Center and Texas Restaurant Association respectfully move the Court pursuant to Local Rule CV-7(B) and 7(E)(1) for entry of an Order permitting them to file a notice of supplemental authority in support of their emergency motion for preliminary injunction. Specifically, Plaintiffs seek leave to file a notice of supplemental authority informing the Court of a pertinent ruling by the Supreme Court of the United States. In support of this motion, Plaintiffs state as follows:

1. Plaintiffs filed their emergency motion for preliminary injunction on December 17, 2021. (ECF 11.) Defendants filed their response to Plaintiffs' motion on January 19, 2022. (ECF No. 19.) Plaintiffs filed their reply memorandum in support of their emergency motion for preliminary injunction (ECF No. 22) on January 26, 2022. On February 22, 2022, the Court issued an Order denying Plaintiffs' emergency motion for preliminary injunction. (ECF No. 27.) Plaintiffs subsequently filed a Notice of Appeal (ECF No. 28) on March 1, 2022. On April 28, 2023, the U.S. Court of Appeals for the Fifth Circuit reversed the District Court's ruling, holding that it abused its discretion in finding that Plaintiffs failed to show irreparable harm. *Rest. Law Ctr. v.*

United States Dep't of Labor, No. 22-50145, 2023 WL 3139900 (5th Cir. Apr. 28, 2023). This case is now before this Court following remand by the Fifth Circuit with the instruction to proceed expeditiously to consider the remaining prongs of the preliminary injunction analysis.

2. After the briefing on Plaintiffs' emergency motion for preliminary injunction, on June 30, 2022, the Supreme Court issued its decision in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022). That decision articulated principles of administrative law and separation of powers that bear on the pending emergency motion for preliminary injunction before this Court. Specifically, the ruling supports the arguments Plaintiffs make at pages 26 through 44 (references are to ECF-assigned pagination) of their opening emergency motion for preliminary injunction (ECF No. 11) and at pages 6 through 14 of their emergency motion for preliminary injunction reply. (ECF No. 22.)

3. During the appeal of the order denying the motion for preliminary injunction, both the Plaintiffs and the Defendants briefed their arguments regarding the principles articulated in *West Virginia v. EPA*. Plaintiffs now seek to incorporate as part of their briefing of the emergency motion for preliminary injunction the arguments they made on appeal related to *West Virginia v. EPA*.

4. Pursuant to Local Rule CV-7(G), Plaintiffs' counsel has conferred in good faith with counsel for Defendants, who advises that Defendants oppose this motion.

WHEREFORE, Plaintiffs respectfully request that this Court grant leave to file the notice of supplemental authority attached hereto as Exhibit 1 in support of their emergency motion for preliminary injunction. A proposed order appears as Exhibit 2.

Respectfully submitted,

By: s/ Paul DeCamp

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Counsel for Plaintiffs

May 9, 2023

CERTIFICATE OF SERVICE

I, Paul DeCamp, an attorney, hereby certify that on May 9, 2023, I caused a copy of the foregoing **PLAINTIFFS' MOTION FOR LEAVE TO FILE A NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF THEIR EMERGENCY MOTION FOR PRELIMINARY INJUNCTION** to be filed with the clerk of the court, using the court's CM/ECF System. Notification of such filing will be sent to the following party:

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s/ Paul DeCamp _____